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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

OMAR RODRIGUEZ; CINDY GUILLEN-  
GOMEZ; STEVE KARAGIOSIAN;  
ELFEGO RODRIGUEZ; AND JAMAL  
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK; AND DOES 1 THROUGH  
100, INCLUSIVE.

Defendants.

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant

CASE NO.: BC 414 602

**PLAINTIFF CINDY GUILLEN-GOMEZ'S  
OPPOSITION TO DEFENDANT'S *EX*  
*PARTE* APPLICATION FOR THE  
UNNECESSARY "PRESERVATION" OF  
THE TESTIMONY OF TIM STEHR;**

Assigned to: Hon. Joanne B. O'Donnell, Judge  
Dept. 37

Complaint Filed: May 28, 2009

Current Trial Date: 04/25/2011

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1 v. *Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 670; *Garcia v. Hejmadi* (1997) 58  
2 Cal.App.4th 674, 690; *Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017,  
3 1028. Moreover, a new or different law, must reflect a change in the law, not challenge to the trial  
4 court's interpretation of the law, *Gilberd, supra*, 32 Cal.App.4th at 1500, or an argument that  
5 counsel made a mistake on the law. *Pazderka, supra*, 62 Cal.App.4th at 670. (A mistake based on  
6 ignorance of the law or imprecision in drafting legal arguments is not a proper basis for  
7 reconsideration). The statute provides that "a violation of this section may be punished as a  
8 contempt and with sanctions as allowed by Section 128.7." CCP §1008(d).

9 Plaintiff respectfully submits that Defendant cannot point to a new or different fact,  
10 circumstance or law which would permit reconsideration under CCP §1008. As such, the Court  
11 need go no further. The application should be denied.

### 12 **III. DEFENDANT DOES NOT HAVE GOOD CAUSE TO GRANT EX PARTE RELIEF**

13 Even if the Court were to be inclined to consider the application substantively, which it  
14 should not do as a matter of law, or consider the application as one to shorten time, which was not  
15 noticed, the Application should still be denied. Rule 3.1202(c) of the *California Rules of Court*  
16 requires the moving party to make an affirmative factual showing in a declaration containing  
17 competent testimony based upon personal knowledge of the irreparable harm, immediate danger of  
18 other good cause for granting relief *ex parte*. The mere lack of time for statutory notice or desire to  
19 proceed in a speedier fashion is not a sufficient reason for proceeding *ex parte*. *Datig v. Dove*  
20 *Books, Inc.*, (1999) 73 Cal.App.4th 964, 977 (1999) (even where *ex parte* procedure statutorily  
21 allowed, proper showing must be made); *see also* Weil & Brown, *Cal. Prac. Guide: Civ. Proc.*  
22 *Before Trial* (The Rutter Group 2010) §9:364, p. 9(I)-144.

23 Here, the Defendant had plenty of time to "preserve" the evidence during the discovery  
24 phase of this action, but failed to do so. Tim Stehr was the Chief of Police for Defendant City of  
25 Burbank, and he is now a paid "consultant" for this and other litigation. Simply put, there is no  
26 good cause to grant this *ex parte* application in any respect.

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1       **IV. DEFENDANT’S PRONOUNCED LACK OF DILIGENCE IN DISCOVERY SHOWS**  
2               **A LACK OF GOOD CAUSE TO FURTHER EXTEND DISCOVERY**

3               The Court cannot grant the relief requested without implicitly extending the discovery  
4 cutoff, which this Court declined to do just a week ago. Even if the Court were to consider  
5 defendant’s request for extension of the discovery cutoff, the request should still be denied.

6               Under CCP §2024.050(b), the Court “shall” take into consideration any relevant factor on a  
7 motion to extend the discovery cutoff, including: the *diligence or lack of diligence* of the party  
8 seeking the discovery, and prejudice to the opposing party including likelihood of moving the trial  
9 date, and, the *length of time that has elapsed* between any date previously set, and the date presently  
10 set, for the trial of the action. Examination of all of these factors weights strongly in favor of  
11 denying defendant’s request to extend the discovery cutoff in this action.

12              Any further extension will prejudice the Plaintiff, as she is entitled to confront witnesses  
13 against her at trial. As such, every factor the Court is required by law to consider weights against  
14 granting defendant’s *ex parte* application to further extend the discovery period to “permit  
15 discovery.”

16               **V. THE COURT SHOULD CONSIDER ISSUING AN OSC RE SANCTIONS**  
17               **AGAINST DEFENDANT’S COUNSEL UNDER SECTION 128.7**

18              Defendant’s *ex parte* application is so lacking factual and legal merit that the Court should  
19 consider issuing an order to show cause why defendant’s counsel should not be sanctioned under  
20 CCP §128.7(d). Pursuant to CCP §128.7(d) any party who brings an improper motion for  
21 reconsideration is subject to sanctions under CCP §128.7. Defendant does not appear to have had a  
22 proper new or different fact, or change in the law as required.

23              Furthermore, the Court should consider whether it should sanction defendant’s counsel for  
24 bringing this improper request to extend the discovery cutoff under CCP §2024.050 (c).

25              If this Court agrees to entertain sanctions, Plaintiff will promptly submit a declaration in  
26 support thereof.

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1 VI. CONCLUSION

2 For all of the foregoing reasons, defendant's Application should be denied.

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5 Dated: April 18, 2011

LAW OFFICES OF RHEUBAN & GRESEN

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7 By: \_\_\_\_\_

Solomon E. Gresen  
Attorneys for Plaintiffs